

Judge: Hon. Mary Jo Heston
Chapter: 7
Hearing Date: November 5, 2024
Hearing Time: 9:00 a.m.
Hearing Site: Zoom.gov
Response Date: October 29, 2024

UNITED STATES BANKRUPTCY COURT FOR THE
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

In re:

JARED ALLEN ROWE,

Debtor.

Case No. 24-41318-MJH

NOTICE OF HEARING ON AND
TRUSTEE'S MOTION TO COMPEL
COOPERATION AND SET
PROCEDURES FOR REALTOR WALK
THROUGH OF PROPERTY

I. NOTICE

The Trustee has filed a motion to compel cooperation and set procedures for the Trustee's realtor to walk through the Debtor's residence("Trustee's Motion"). The hearing on the Trustee's Motion is set as follows:

JUDGE: Hon. Mary Jo Heston

TIME: 9:00 a.m.

LOCATION: ZOOM.GOV

DATE: November 5, 2024

II. MOTION

Russell D. Garrett, Chapter 7 Trustee herein ("Trustee"), by and through his undersigned counsel, moves to compel the cooperation of the Debtor in allowing the Trustee, his real estate agent and any assistant to walk through the Property he resides in with his family and allow him to take photographs and video for the reasons set forth below.

III. FACTUAL BACKGROUND

1. On August 14, 2019, the Debtor purchased real property located 2609 NW 37th Street, Camas, Washington 98607 ("Property") in solely his name. On the same date, the

MOTION TO COMPEL COOPERATION AND
SET PROCEDURES FOR VIEWING

Wood & Jones, P.S.
303 N. 67th Street
Seattle WA 98103
(206) 623-4382

1 Debtor's wife, Samatha Rowe, executed a Quit Claim Deed to the Debtor to create separate
2 property. Also on that date, the Debtor granted Caliber Home Loans, Inc., ("Caliber") a deed
3 of trust in the amount of \$490,200.00. See Declaration of Denice Moewes, **Ex. 1 and 2** and
4 dkt #31, respectively.

5 2. The last payment made on the loan was in January 2021. The amount due
6 under the loan as of July 24, 2024, was \$580,842.70. [dkt. 31-3, page 3].

7 3. On December 29, 2023, Caliber recorded a Notice of Trustee Sale with a
8 foreclosure sale noted for May 10, 2024. Moewes Dec., Ex.

9 4. On May 9, 2024, the Debtor filed a short-form chapter 13 bankruptcy petition,
10 Case No. 24-41049, which stayed the foreclosure which set for the next day. The Debtor did
11 not file his bankruptcy schedules, and the case was dismissed on May 30, 2024.

12 5. Caliber renoted its foreclosure sale and set a new foreclosure sale date of
13 September 6, 2024.

14 6. On June 4, 2024, the Debtor and his wife, Samantha Rowe, transferred the
15 Property to DVJ Starseed Express Trust ("Starseed Trust").

16 7. On June 13, 2024, the Debtor filed this bankruptcy case.

17 8. The first § 341 meeting was held on July 17, 2024, and it has been continued
18 several times. The Debtor testified at the September 17, 2023, § 341 meeting that the
19 Starseed Trust is an irrevocable trust and that he is a co-trustee of the Trust. He also testified
20 that he and his family live at the Property. He then refused to allow the Trustee's realtor
21 access to the Property. McKee Declaration, Ex. 1, Page 3, lines 26-29 through Page 7.

22 **IV. MOTION TO COMPEL COOPERATION**

1 § 521(a)(3) imposes upon the Debtor a duty to “cooperate with the Trustee as
2 necessary to enable the trustee to perform the trustee’s duties under this title. Fed. R. Bank.
3 P. 4002(a)(4) states that “[T]he debtor shall . . . cooperate with the trustee in the preparation
4 of an inventory, the examination of proofs of claim and the administration of the estate.” The
5 Trustee has a duty to collect and reduce to money the property of the estate and to investigate
6 the financial affairs of the Debtor. 11 U.S.C. §704(a)(1) & (4).
7

8 The Ninth Circuit stated “[t]he filing of a Chapter 7 bankruptcy petition automatically
9 creates an estate The trustee is the representative of this estate, and the debtor has a duty
10 to surrender to the trustee all estate property.” *In re Mwangi*, 764 F.3d 1168, 1173 (9th Cir.
11 2014) (citations omitted). In an unpublished decision, the Ninth Circuit Bankruptcy
12 Appellate Panel noted “this duty, is non-negotiable.” *In re Nakhuda*, 2015 WL 873566, at *3
13 (B.A.P. 9th Cir. Mar. 2, 2015); see also *Brower v. Evans*, 257 F.3d 1058, 1068 n. 10 (9th Cir.
14 2001) (stating “[s]hall’ means shall”). In the *Nakhuda* case, the Panel affirmed a bankruptcy
15 court's order compelling turnover of bankruptcy estate assets and records and discontinuance
16 of the Debtor's operation of two businesses. In its ruling, the Panel stated: Here, the Trustee
17 merely sought an order requiring the Debtor to comply with his duties under § 521(a)(3) and
18 (a)(4), duties statutorily imposed without necessity of a court order. It did not matter whether
19 the Debtor received notice and the opportunity to be heard. He could not object to the
20 Trustee's appropriate request for physical surrender of the property of the estate or
21 information relating to property of the estate. *Nakhuda*, 2015 WL 873566, at *3.
22

23 The Debtor had a duty to allow the Trustee to enter the Property upon his request,
24 without the necessity of a court order. The Trustee has a duty and a right to inspect the
25 Property along with any agent he chooses. There may be equity in the Property, but the only
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1 way to determine that is to have the Trustee's real estate agent view the Property, without the
2 Debtor, his wife, or their children present.

3 WHEREFORE, the Trustee asks that this Court order that the Debtor and other
4 residents of the Property vacate it and surrender possession of the Property to the Trustee for
5 45 minutes to allow a walk through of the Property to occur on November 8, 2024 at 9 a.m.
6

7 V. OBJECTIONS

8 Your rights may be affected. You should read these papers carefully and discuss
9 them with your attorney, if you have one in this bankruptcy case. (If you do not have an
10 attorney, you may wish to consult one.)
11

12 If you do not want the court to approve the Trustee's Motion, or if you want the
13 court to consider your views on the Trustee's Motion, then on or before October 29,
14 2024, you or your attorney must file your objection and serve a copy upon Denice
15 Moewes, Wood & Jones, P.S., 303 N. 67th Street, Seattle, WA 98103.
16

17 If you mail your response, objection or comment to the Court and counsel, you
18 must mail it early enough so that the court will receive it on or before the date stated
19 above.

20 If you or your attorneys do not take these steps, the Court may decide that you do
21 not oppose the Trustee's Motion and may enter an order granting the relief requested in
22 that motion.
23

24 Further information regarding the Trustee's Motion may be obtained by
25 telephoning Denice E. Moewes, at (206) 623-4382.
26

27 Dated this 15th day of October, 2024.

28 WOOD & JONES, P.S.

/s/ Denice E. Moewes

Denice E. Moewes, WSBA #19464

Attorney for Chapter 7 Trustee

Russell D. Garrett

ZOOMGOV ACCESS INFORMATION

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